

U.S. District Court

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF OHIO 3 EASTERN DIVISION</p> <p>4 LOCAL 17 INTERNATIONAL ASSOC. OF) 5 BRIDGE & IRON WORKERS INS. FUND,) 6) 7 Plaintiff,) Civil Action No. 8 vs.) 1:97CV1422 9 PHILIP MORRIS, INC, ET AL,) Akron, Ohio 10 Defendants.) VOLUME 6</p> <p>11 TRANSCRIPT OF JURY TRIAL, HAD BEFORE 12 THE HONORABLE JAMES S. GWIN, JUDGE 13 OF SAID COURT, ON MONDAY, MARCH 1, 1999 14 AT 8:00 O'CLOCK A.M.</p> <p>15 APPEARANCES: 16 For Plaintiffs: PATRICK J. COUGHLIN, ESQ. 17 JOHN MONROE, ESQ. 18 MICHAEL DOWD, ESQ. 19 Milberg, Weiss, Bershad, Hynes & Lerach 20 600 West Broadway, Suite 1800 21 San Diego, CA 92101</p> <p>22 MICHAEL E. WITHEY, ESQ. 23 Stritmatter Kessler Whelan Withey 24 1200 Market Place Tower 25 2025 First Avenue Seattle, WA 98121</p> <p>ROGER M. ADELMAN, ESQ. Suite 730 1100 Connecticut Avenue, N.W. Washington, D.C. 20036</p> <p>JACK LANDSKROWER, ESQ. The Landskroner Law Firm 55 Public Square, Suite 1040 Cleveland, OH 44113</p> <p>EBEN O. MCNAIR, IV, ESQ. Schwartzwald & Rock 616 Bond Court Building 1300 East Ninth Street Cleveland, OH 44114-1503.</p>	<p>1 (The following proceedings were conducted 2 outside the presence of the jury:)</p> <p>3 THE COURT: I'm sure you have some questions, 4 it's come to our attention you may be a beneficiary under 5 this, and I think there had been some discussion, but we 6 had thought that the fund you were attached with wasn't 7 a part of this case, and --</p> <p>8 JUROR NUMBER 12: I don't think it is but.</p> <p>9 THE COURT: It may be.</p> <p>10 JUROR NUMBER 12: Okay.</p> <p>11 THE COURT: Let me ask, I release you from the 12 earlier instructions, but I think I would strongly 13 encourage you without ordering you not to talk about the 14 case or your impressions.</p> <p>15 JUROR NUMBER 12: I won't.</p> <p>16 THE COURT: When we have a verdict, you are 17 free to talk to whoever you wish. But don't engage in it. 18 Sometimes attorneys want to investigate it or people want 19 to pick your brain or what your interim impressions were, 20 but you agreed with us you wouldn't reach an opinion until 21 all the evidence was in. Your earlier impressions would 22 be subject to change. I think it is for your benefit and 23 our benefit. It is best you stay away from having any 24 conversations with either family members or friends or 25 anybody else.</p>
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<p>1 For Philip Morris, Inc: BRADLEY E. LERMAN, ESQ. 2 GEORGE LOMBARDI, ESQ. 3 Winston & Strawn 35 West Wacker Drive Chicago, IL 60601-9703</p> <p>4 For Lorillard Tobacco Co: GARY R. LONG, ESQ. 5 GREGORY L. FOWLER, ESQ. 6 Shook, Hardy & Bacon One Kansas City Place 1200 Main Street Kansas City, MO 64105-2118.</p> <p>7 For R.J. Nabisco, Inc.: ROBERT C. WEBER, ESQ. 8 R.J. Reynolds Tobacco, Jones Day Reavis & Pogue 9 R.J. Nabisco Holding North Point 901 Lakeside Avenue Cleveland, OH 44114-1190</p> <p>10 For Brown & Williamson DAVID BERNICK, ESQ. 11 and BATCo: MICHELLE H. BROWDY, ESQ. 12 Kirkland & Ellis 200 East Randolph Drive Chicago, IL 60601</p> <p>13 Court Reporters: Richard G. DelMonico 14 Joan Zengler 15 U.S. District Court 16 2 South Main Street - 4th Floor 17 Akron, OH 44308 18 (330) 535-2280, 535-1823</p>	<p>1 JUROR NUMBER 12: Okay.</p> <p>2 THE COURT: Thanks for being with us. I 3 apologize for not understanding this earlier, because we 4 wouldn't have -- not wanted to inconvenience you in terms 5 of spending the week. You know more about smoking now 6 than you ever wished.</p> <p>7 JUROR NUMBER 12: That's true; that's true.</p> <p>8 THE COURT: Thanks a lot.</p> <p>9 MR. WEBER: Thank you.</p> <p>10 THE COURT: Could you have him get his stuff. 11 I would rather him not go back with the other jurors until 12 we bring them in.</p> <p>13 JUROR NUMBER 12: My coat is the only thing in 14 there.</p> <p>15 (The jury was returned to the courtroom and the 16 following proceedings were conducted in open court:)</p> <p>17 THE COURT: If the jury will please be seated. 18 I would just indicate to the jury that I excused juror 19 number 12. After some further review, the court learned 20 that he was actually one of the beneficiaries of one of 21 the funds that is involved in this litigation. We had not 22 thought that to be true originally, but after some further 23 checking we found that out. And for that reason, I've 24 excused juror number 12. Which just allows me an 25 opportunity to reiterate. We have invested a lot of time</p>

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1 next witness. I don't mean to make light, but you'll see
 2 the attorneys have different uniforms for the day. The
 3 plaintiff's is the blue uniform. Tomorrow you'll likely
 4 see them in the gray uniform.
 5 MR. ADELMAN: If I may, your Honor, I will call
 6 Thomas Farone.
 7 THE COURT: Thank you
 8 WILLIAM A. FARONE
 9 called as a witness by and on behalf of the Plaintiff,
 10 being first duly sworn, was examined and testified as
 11 follows:
 12 THE COURT: And if you'll state your name and
 13 spell your last name for the court reporter.
 14 A. My name is William Anthony Farone, F-A-R-O-N-E.
 15 THE COURT: Mr. Adelman.
 16 ---
 17 DIRECT EXAMINATION
 18 BY MR. ADELMAN:
 19 Q. Doctor, good afternoon. Doctor, can you tell us
 20 where you are from?
 21 A. Irvine, California.
 22 Q. And how are you employed now?
 23 A. I am a President and Chief Executive Officer of
 24 Applied Power Concepts, Incorporated.
 25 Q. And generally and briefly tell us what Applied Power

1 Robert B. Seligman, Vice President of Research and
 2 Development. The mission was to learn about the business.
 3 And then for next seven years, I was Director of Applied
 4 Research, at Philip Morris.
 5 Q. And where geographically were you situated during
 6 those 8 years of Philip Morris?
 7 A. At the laboratories in Richmond, Virginia.
 8 Q. Before we can go on, can you give us a bit of your
 9 educational background, let's say, starting in college?
 10 A. I received my bachelors in science in 1961 from
 11 Clarkson University. My major was in chemistry with minors
 12 in electrical and chemical engineering. I received my
 13 masters degree in chemistry completed in 1962, received a
 14 degree in 1963. I received my doctor of philosophy in
 15 chemistry in 1965, also from Clarkson University.
 16 Q. Have you ever taught?
 17 A. I taught college for two years, associate professor
 18 of chemistry at Virginia State University.
 19 Q. And have you ever been involved in writing articles
 20 in the field of chemistry or related field?
 21 A. Yes, I have some more than 50 publications.
 22 Q. Now, have you ever done or made any application for
 23 patents?
 24 A. Yes, I think I'm inventor on some 13 to 15 different
 25 patents.

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1 Concepts does?
 2 A. We develop remediation technology and replacement for
 3 things which pollute the environment.
 4 Q. Are you the President?
 5 A. Yes, I am.
 6 Q. How many people do you employ?
 7 A. 12.
 8 Q. Are any of those people scientists?
 9 A. All of them.
 10 Q. How long have you been engaged in Applied Power
 11 Concepts?
 12 A. 13 years.
 13 Q. Prior to that time, which brings us back to the
 14 mid-'80's, where were you employed?
 15 A. At a prior company called Advanced Scientific
 16 Applications Incorporated from 1984 through 1987, when
 17 Applied Power Concepts bought it out.
 18 Q. Now, was there ever a time you worked for Philip
 19 Morris?
 20 A. Yes, there was.
 21 Q. When was that?
 22 A. From the end of March, 1976 to July, 1984.
 23 Q. In what capacity did you work at Philip Morris?
 24 A. The first year I worked for Philip Morris I had
 25 position of Associate Principal Scientist, reporting to Dr.

1 Q. Was there a time you were employed by Lever Brothers?
 2 A. I was employed by Lever Brothers in 1967 through
 3 1975.
 4 Q. And where in Lever Brothers complex did you work,
 5 sir?
 6 A. At the laboratory in Edgewater, New Jersey.
 7 Q. And briefly, what type of work did you do there?
 8 A. I began as a Senior Scientist and advanced to Manager
 9 of New Product Development. And I became their Director of
 10 Scientific Research in 1972, a position that I held until
 11 1975.
 12 Q. Now, you joined Philip Morris in 1976, correct?
 13 A. Yes.
 14 Q. And what did you do in the interim years between 1965
 15 and 1976?
 16 A. I was Vice President of Research Development of
 17 a company called R&VO International.
 18 Q. Did you seek out the position at Philip Morris that
 19 you obtained?
 20 A. No, I did not.
 21 Q. How did it come about that you joined Philip Morris?
 22 A. I was sought by an executive search firm of Hide,
 23 Direct and Struggles.
 24 Q. Now, moving ahead, looking to the 8 years of your
 25 employment at Philip Morris, could you tell us what type of

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1 at this point in this case, it is moving along. It's
2 absolutely incumbent upon everyone of you to make sure you
3 are here every day. We'll go forward now with 11 jurors,
4 but it's very, very important that each of you continue to
5 be as diligent as you have in terms of reporting for
6 service each morning. So, I extend the thanks to you for
7 the service you have given so far, but reiterate the
8 importance of you getting here every day. So, I will at
9 this point in time call upon the plaintiff to call your
10 next witness.

11 MR. COUGHLIN: Your Honor, we would call Dr.
12 Neal Benowitz. Good morning ladies and gentlemen.

13 NEAL BENOWITZ
14 called as a witness by and on behalf of the Plaintiff,
15 being first duly sworn, was examined and testified as
16 follows:

17 THE COURT: Good morning.

18 THE WITNESS: Good morning.

19 THE COURT: If you would help us by stating
20 your name and spelling your last name for the court
21 reporter.

22 THE WITNESS: It's Neal Benowitz. N-E-A-L,
23 B-E-N-O-W-I-T-Z.

24 THE COURT: Mr. Coughlin.

25 ---

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1 DIRECT EXAMINATION

2 BY MR. COUGHLIN:

3 Q. Good morning, Dr. Benowitz?

4 A. Good morning.

5 Q. Dr. Benowitz, you understand you are here to talk
6 about how nicotine controls smoking behavior and how the
7 tobacco industry optimized the cigarette design to insure
8 the optimal delivery device of nicotine?

9 A. Yes.

10 Q. Dr. Benowitz, each of the cigarette companies in this
11 case has asserted whether to smoke or not is the free
12 choice and will. Have you ever heard those assertions?

13 A. I have.

14 Q. Do you have an opinion about that?

15 A. Yes.

16 Q. And what's that opinion?

17 A. The question of free will is complex. It's a yes and
18 no answer.

19 The yes part of it is that smokers' brains work
20 perfectly well, nicotine does not have any impairment on
21 thinking or on making decisions. Smokers make valid
22 decisions about all aspects of their life, except when
23 dealing with smoking.

24 Therefore the reason is, when a person makes a
25 decision it's influenced by many factors, all decisions

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1 are. If a person is deciding about smoking, the decision
2 is made on reasons to stop smoking, which may be health
3 concerns for one's self, health concerns for one's
4 children, the fact that one's family wants you to stop
5 smoking, the cost of smoking. So, those are some of the
6 factors that weigh for a person to stop.

7 The factor that weighs to keep a person smoking
8 is nicotine addiction. It's that when they quit smoking,
9 their lives are often disrupted, they can't think right,
10 they can't concentrate, can't focus, become irritable,
11 have trouble with the job, don't feel good, have trouble
12 finding pleasure in lots of things in one's life.
13 Don't -- have problems dealing with stress.

14 A number of things occur in many smokers that
15 makes the quitting process extremely uncomfortable and
16 really impairs their functioning, and smokers learn that,
17 and that becomes a very strong factor in the balance of
18 whether to smoke or not.

19 One can look at two aspects of the free will
20 choice that I think illustrates this for smoking. One is
21 whether a person's decisions are internally consistent.
22 Normally, you expect a person to make one decision and
23 then other decisions that are consistent with one another.

24 One of the things that is well known is that
25 many smokers, 70 percent of smokers would like not to

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1 smoke. 35 percent of smokers make a serious quit attempt
2 each year, they quit for at least a day trying to stop
3 smoking. Only one in ten succeed.

4 The average smoker, when they do quit, has
5 tried four, five times and has failed.

6 One obvious question is, what is it that makes
7 a person want to quit, to try to quit many times, and have
8 such a low success rate and fail many times, often taking
9 years to quit when their stated desire is they don't want
10 to smoke. I don't think that's just from the flavor of
11 cigarettes. It's because people are addicted to nicotine.

12 A second way of looking at it has to do with
13 behaving in a way that's not self-destructive. Most
14 people, unless they are suicidal, will not do things that
15 they know will hurt them. In the case of cigarette
16 smoking, most smokers know that cigarette smoking is
17 harmful to health.

18 Many smokers have been told by doctors that
19 they should stop smoking. Even if one looks at the
20 extreme situation of people who have had smoking related
21 diseases like heart attacks where doctors say smoking is
22 the worst thing for you, it's going to double or quadruple
23 your chance of dying in the near future, 50 percent of
24 smokers keep on smoking in spite of that advice.

25 These smokers who keep on smoking in spite of